

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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October 18, 2005

David L. Edward, Esq.
Counsel for Great Western Bank
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Sioux Falls, South Dakota 57104

Ms. Carrie Langan
Creditor, *pro se*
28261 473rd Avenue
Worthing, South Dakota 57077

Subject: *In re Jeff D. and Tracee R. Murphy,*
Chapter 7, Bankr. No. 05-40986

Dear Mr. Edward and Ms. Langan:

The matter before the Court is the Motion for Relief From Automatic Stay and Motion to Compel Abandonment ("Motion") filed by Great Western Bank and the objection to the Bank's Motion filed by Carrie Langan. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c).¹ As set forth below, the Bank's Motion will be granted.

Summary. Jeff D. and Tracee R. Murphy filed a Chapter 13 petition in bankruptcy on July 14, 2005. Their Chapter 13 case was converted to a Chapter 7 case on October 3, 2005.

On September 22, 2005, shortly before the case was converted to Chapter 7, Great Western Bank filed a motion asking the Court to have certain real property abandoned from the bankruptcy estate and to allow it to have relief from the automatic stay to continue a state court foreclosure action regarding some real property. The only objection to the motion was filed by Carrie Langan on October 4, 2005. She argued that the Bank should be paid with the other creditors, including unsecured creditors like herself. She also made allegations of fraud against Debtors and asked that they be held accountable for their actions.

¹ An evidentiary hearing was not held because no material facts were in dispute.

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Discussion. In a Chapter 7 bankruptcy case such as this one, the case trustee liquidates property of the bankruptcy estate to pay the claims of unsecured or undersecured creditors. If an item of property -- whether a house or a car or something else -- has a valid secured claim against it, the secured creditor must be paid with the asset's proceeds before other claims are paid. If the item of property is worth less or equal to the amount of the secured claim, then the secured creditor generally gets the property back since there is no value in it for the other bankruptcy creditors.

In this case, both the Chapter 7 trustee and Debtors themselves have acknowledged, by not filing an objection to the Bank's Motion, that the Bank holds as collateral all the value in the real property described in the motion. Langan, as the only objector, also did not argue that the subject real property had any value for the bankruptcy estate above the Bank's secured claim. Accordingly, the present record shows there is no equity in the subject land and buildings that belongs to the bankruptcy estate and that can be liquidated to pay unsecured claims. As a secured creditor, under 11 U.S.C. § 554(b) the Bank therefore is entitled to have the case trustee abandon that real property from the bankruptcy estate. Under 11 U.S.C. § 362(c), the Bank is also entitled to have an order from this Court allowing it to finish its state court foreclosure action. The Bank may submit an appropriate order.

That Debtors may have committed fraud or abused the legal system is not an obstacle to the Bank's Motion. Langan may refer her fraud and abuse concerns by letter to the case trustee, John S. Lovald, or Assistant United States Trustee Bruce J. Gering. If she thinks her and her husband's particular claim arose from fraud or if she thinks Debtors have committed fraud in connection with their bankruptcy case, she may file an appropriate complaint under 11 U.S.C. § 523(a) or § 727(a) before the January 13, 2006, deadline.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

CC: case file (docket original; serve parties in interest)

OCT 18 2005 *CL*
Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Label Matrix for local noticing
0869-4
Case 05-40986
South Dakota
Southern (Sioux Falls)
Tue Oct 18 15:36:14 CDT 2005

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~~Great Western Bank~~

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